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УДК 343.214 (043.2)7

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## REHABILITATION IN CRIMINAL PROCESS

### РЕАБІЛІТАЦІЯ В КРИМІНАЛЬНОМУ ПРОЦЕСІ

The article examines the concept (rehabilitation of the criminal process), analyzes scientific views on this issue and proposes a new view of the definition of the term. Purpose of this article is to clarify the legal nature and to define “rehabilitation”.

**Key words:** *criminal process, rehabilitation, notion, definition.*

У статті досліджується поняття «реабілітація в кримінальному процесі», аналізуються наукові погляди щодо цієї проблеми, з їх урахуванням пропонується нова інтерпретація цього поняття.

**Ключові слова:** *кримінальний процес, реабілітація, поняття, дефініція.*

В статье исследуется понятие «реабилитация в уголовном процессе», анализируются научные взгляды по этой проблеме, с их учетом предлагается новая интерпретация этого понятия.

**Ключевые слова:** *уголовный процесс, реабилитация, понятие, дефиниция.*

The current socio-economic and spiritual condition of Ukrainian society needs to prominence priority social functions of the state. Government policy should focus entirely on the person, the establishment and maintenance of normal conditions for its life. Crucial in this respect is to ensure the totality of the rights and freedoms of man and citizen, as well as the possibility of reliable security protection and legal means.

Particular importance these theses gain in the criminal process, since it may incur a person applying measures of procedural coercion and condemnation that are inherently connected with restrictions its rights, including freedom and integrity. In this regard, it is essential to have faithful execution of the tasks of criminal justice as exposing those responsible and ensure the correct application of the law so that anyone who has committed a crime is prosecuted and innocent not to be punished.

However, the criminal process, like any other human activity, is not safe from possible errors, including the illegal and unwarranted prosecution and (or) conviction. Of course, this kind of error needs not only the immediate elimination, but also an effective mechanism for recognition and renovation of all violations of individual rights. The role of this mechanism in the criminal process is intended to carry out the rehabilitation institute.

Research and study of Rehabilitation Institute as well as issues associated with it in the criminal process has been ongoing for many years. These famous pre-revolutionary scholars as A. Koni, M. Mirolubov, I. Foynytsky and others have drawn attention to the importance of consequences of unreasonable and unlawful prosecution and conviction. To the Study of rehabilitation institute are devoted works of prominent Soviet scientists as B. Bezlyepkin, L. Boitsova, V. Lukaszewicz, M. Myheyenko, M. Pastuhov, M. Strogovich, T. Tadgiev etc. In Ukraine on the problems of Rehabilitation Institute work such scientists as O. Kaplina, V. Nor, M. Shumylo and others.

However, today the scientific research institute of rehabilitation is accompanied by a number of controversial issues, among those the special place is occupied by the term “rehabilitation” because of its correct interpretation depends on the solution of many legal issues (conditions and reasons of rehabilitation, rehabilitation order, Consequences etc.).

Purpose of this article is to clarify the legal nature and to define “rehabilitation”.

The word “rehabilitation” is derived from the Latin “rehabilitation”, where “re” – a prefix meaning recovery, “habilitation” – ability, suitability. This concept lawyers use for several centuries. M. Mirolubov noted that this term was firstly used by the medieval French legalist Visupiapiz for referring to Institute of pardon

a person convicted of a crime and deprived in this respect those rights, which it could use as an equal member of society (the title, the right to engage in certain activities, etc.). Thus for rehabilitation requires certain conditions. First, a complete completion of sentence imposed by the court, and secondly, evidence that prove that one sentenced has improved and now lives following all the rules and laws, and thirdly, the appropriate state agency must decide on rehabilitation [1, p. 114]. Thus, the institution of rehabilitation was like a modern institution of atonement or removal of conviction.

Over time, the concept of “rehabilitation” has changed several times, due to historical changes. Today in most dictionaries, you can find quite a different understanding of the term. Thus, in the explanatory dictionary of the Ukrainian language provided the following explanation of this concept: restoration of the good name, of reputation unfairly tainted or wrongly accused person, restoration of human rights in relation to which the verdict was reversed [2, p. 881].

Thus, a term that appeared as a way of pardon, gradually, in the course of evolution associated with large-scale developments in the socio-economic life of European countries and the changes caused by their views on punishment, rehabilitation becomes a way of renovation deprived of legal capacity and social status of the person sentenced.

Considering the above and taking into account that in criminal proceedings application of discretionary principle becomes increasingly wider, we must once again come to the analysis and the definition of “rehabilitation”. There is plenty of scientific definitions, some of which are very similar, so in order to compact the consideration of this question in this article we conditionally divide them into three groups.

The first group are authors who believe that rehabilitation of the criminal process is merely a procedural decision that confirmed the innocence of a person who has suffered unlawful and unjustified prosecution and (or) that the conviction or acquittal ruling to dismiss the case for rehabilitating grounds.

B. Bezlepkin pointed that rehabilitation is acquittal of the defendant by court or the termination of criminal proceedings against the convicted or accused and suspected in the absence of an event or of a crime as well as other bases matched to represent the different versions of these terms and conditions.

A similar approach is used to determine the rehabilitation by T. Tadzhyyev that thought of it as the decision to the appropriate authorities, as set out in the Criminal Procedure Act, which states the absence of the event or of an offense or failure to prove the involvement of a person with a crime [4, p. 15].

From the definitions it follows that rehabilitation is a decision by the competent authority of the law excuses a person close a criminal case for rehabilitating circumstances. However, this may not fully reflect the nature and process of rehabilitation. The process of rehabilitation of the person to whom pecuniary or material damage as a result of unlawful actions of law enforcement and (or) judicial authorities, beyond the “one act” action. With the ad judgment of the rehabilitation process rehabilitation solution is not complete. Instead, this moment is the begin-

ning of the rehabilitation process. Equate rehabilitation and rehabilitation decision of the competent authority means unilateralism in the definition of this concept that does not reveal its true nature.

The second Group are scientists who believe that the essence of rehabilitation is to restore the rights and reputation of the person who experienced the illegal and unwarranted prosecution and (or) conviction. In other words, as rehabilitation they understand the legal consequence of justification, which is the implementation of compensatory measures to restore violated rights and legitimate interests of the individual and its compensation for damages sustained.

According to M. Maksymenko as rehabilitation should be understood publicly guaranteed restoration of violated rights and freedoms of persons illegally or unjustly prosecuted, compensation to such person, in her request, fully caused property damage and compensation for moral damage [5, p. 7].

A. Kaplina believes that rehabilitation of the criminal process –is a system provided by law socio-legal measures are designed to complete the restoration of civil rights, wrongfully prosecuted or convicted, compensation for the damage [6, p. 30]. Almost the same view is held by I. Ozersky [7, p. 78].

As pointed out by V. Vladimirova, rehabilitation should be considered as an order restoring the rights and legitimate interests of victims of crime, as well as persons who unlawfully or unjustifiably subjected to criminal prosecution. compensation for the damage and compensation for moral damage [8, p. 4]. This kind of definition also does not reveal the full meaning of the term "rehabilitation. We agree with M. Shumylo [9, p. 63], but believe that criminal procedure decision should not be artificially separated that establishes a fact of not being involved, innocent person of a crime, with measures that have purpose to eliminate the negative effects of unreasonable and unlawful prosecution and (or) conviction. In fact, this decision creates legal and rehabilitation should be an integral part of them.

The most successful, in our opinion, is a scientific approach to the question at issue, proposed by the third group, who claim that rehabilitation is not just making the rehabilitation act, but also for damages and other restoration of violated rights and legitimate interests of the individual. This definition includes not only formal-legal aspect but also the compensation that is fully consistent with the very purpose of rehabilitation institution.

Regarding compensatory rehabilitation as its constituent elements, to it there is some divergence of views among scientists, it allows us to within the group divided into two subgroups. Proponents of the first, including A. Glubina, A. Korneyev, M. Pastuhov, M. Shumilo indicate that damages the person has to be real, that rehabilitation will be considered complete only when the person will be completely recovered from the damage and the person will updated other rights. A. Glubina has a definition "Rehabilitation": a formal recognition of innocent people in her alleged crime, expressed in the relevant legal act, reparation of damage, and restore it to other rights violated as a result of the illegal and unjustified prosecution and (or) conviction.

A. Korneyev believes that the rehabilitation process should be understood as recognition citizen guilty of a crime with a mandatory restoration of his rights, freedoms and good reputation, full refund of state damage and eliminate the harmful effects caused rehabilitated illegal and unwarranted criminal prosecution or conviction [11, p. 6].

M. Shumilo think of the rehabilitation work of the court aware of the finding of unlawfulness of criminal procedure proceedings against the individual and determine the amount of property damage caused by it and its compensation with other officials, organizations, enterprises and institutions in the adoption of the previously restricted rights in accordance with established judicial order to return it to the social and legal status, one had to commit it are unambiguous illegal judicial actions or decisions [9, p. 69].

Proponents of the second subgroup, including D. Amirbekova, D. Tatyatin indicate that rehabilitation should involve no actual damages to the person as a guarantee and provide a refund. This is because the damages can't be considered one of the constituent elements of criminal rehabilitation process because it is only right that vested after the person making the rehabilitation act.

According to G. Amirbekova, the term "rehabilitation" should include the use of guarantees by a person duly qualified innocent rights, including the right to compensation for damage caused by illegal actions of her pretrial investigation and (or) the court, and also guarantees of actual damages to the person who will take advantage of this right [12, p. 34–35].

D. Tatyatin believes that rehabilitation is the process of restoring the rights and legitimate interests of the person who illegally or unjustly suffered prosecution and (or) the conviction or the imposition of compulsory measures of educational or medical character but recognized in accordance with the law guilty of a crime, or entitled to rehabilitation under other specified in the Criminal Procedure Code, the grounds and providing the first real possibility of redress in connection with the damage [13, p. 241].

In our opinion, this scientific position is correct. Of course, in accordance art. 56 of the Constitution of Ukraine everyone has right for compensation from the state of material and moral damages caused by unlawful actions or omissions by public authorities and their officers and employees in the exercise of its powers. This is an important and fundamental principle that the right to compensation vested anyone who has experienced it, including rehabilitated who unlawfully and unreasonably been prosecuted and (or) convicted because of an error the relevant government authorities. This is one of many of the rights of the person who acquires the status rehabilitated, and the responsibility of the state (through its agencies) is to correct their mistakes by creating, guarantee and provide all the necessary conditions to facilitate the implementation of the person given her rights.

Right for compensation is one of the rights that gets rehabilitated, but do not consider it an integral part of rehabilitation and put one dependent on the other. There may be a situation where a person does not wish to use the right to compensation (it's right but not the obligation) rehabilitation thus be considered incom-

plete (“eternal rehabilitation”). Some scholars, including A. Podopyryhora indicate that in situations where the person does not wish to exercise the right to compensation, rehabilitation shall be considered complete without it [14, p. 37]. In this situation, it is not clear why bother to allocate damages as a structural element of rehabilitation. if it can fully exist without it.

In conclusion, we propose in the concept of “Rehabilitation” in criminal proceedings to include the following elements:

- recognition of invalidity and illegality of criminal prosecution and (or) the conviction that stated in the relevant Rehabilitation Act;
- empowering rehabilitated rights, including the right to compensation;
- ensuring and providing the state (through its relevant organs) the possibility of renovation of all suspended from the rights and guarantees and providing redress for harm to the person.

Also, noteworthy is that many scholars, defining the term “rehabilitation” include in it the phrase “unlawful or unjustified prosecutions and (or) condemnation” [5, p. 7; 8, p. 4; 13, p. 24]. From this we can make conclusion that rehabilitation to those individuals who have experienced or unlawful or unjustified prosecutions and (or) conviction. However, prosecution and conviction can’t be either lawful or reasonable. In our opinion, “or” is not valid. This follows even from the provisions of the Criminal Procedure Code of Ukraine, where in Part 1 of Art. 323 pointed that verdict must be lawful and reasonable.

The analysis allows to generate a definition: Rehabilitation – a formal recognition of invalidity and illegality of criminal prosecution and (or) the conviction that stated in the relevant rehabilitation act while vesting, guaranteeing and securing the state, through its relevant organs, the possibility of renovation of all deprived of their rights and redress for damage.

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